

1 STEVEN BENITO RUSSO, SBN 104858  
Chief of Enforcement  
2 JEFFERY A. SLY, SBN 185841  
Commission Counsel  
3 **FAIR POLITICAL PRACTICES COMMISSION**  
428 J Street, Suite 620  
4 Sacramento, CA 95814  
Telephone: (916) 322-5660  
5 Facsimile: (916) 322-1932

6 Attorneys for Plaintiff

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY SACRAMENTO

10 FAIR POLITICAL PRACTICES COMMISSION, ) Case No. 03AS05766  
A state agency, )  
11 Plaintiff, ) PLAINTIFF'S MEMORANDUM OF  
12 v. ) POINTS AND AUTHORITIES IN  
13 ) OPPOSITION TO DEFENDANT'S  
CAROLINE GETTY, WILD ROSE LLC and DOES ) SPECIAL MOTION TO STRIKE  
1-20 inclusive, )  
14 Defendants. ) Date: January 16, 2004  
15 ) Time: 9:00 A.M.  
16 ) Dept: 54  
17 ) Complaint filed: October 16, 2003  
18 ) NO TRIAL DATE SET  
19 )  
20 )

21 **INTRODUCTION**

22 In their motion, defendants Caroline Getty and Wild Rose, LLC seek to strike the complaint of  
23 plaintiff Fair Political Practices Commission (the "Commission") in this matter under Code of Civil  
24 Procedure section 425.16. As set forth herein, defendants' motion is substantively without merit, and  
should be denied.

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1 The rationale for not applying the anti-SLAPP statute to enforcement actions by state and local  
2 agencies applies with even greater force to enforcement actions by the Commission. "The manifest  
3 purpose of the financial disclosure provisions of the Act is to insure a better informed electorate and to  
4 prevent corruption of the political process." (*Thirteen Committee v. Weinreb* (1985) 168 Cal.App.3d  
5 528, 532.) The Commission is expressly charged with "primary responsibility for the impartial,  
6 effective administration and implementation" of the Act. (Gov. Code § 83111.)

7 The Commission's primary role in civil enforcement of the Act is set forth at Government Code  
8 section 91001, subdivision (b) as follows:

9 The civil prosecutor is primarily responsible for enforcement of the civil  
10 penalties and remedies of this title. The civil prosecutor is the commission  
with respect to the state or any state agency, except itself.

11 Additionally, Government Code section 82003 states that the Act "should be liberally construed to  
12 accomplish its purposes." Furthermore, the Act is to be "vigorously enforced." (Gov. Code § 81002,  
13 subdivision (f).) The Commission, as an administrative body, is constitutionally bound to enforce the  
14 provisions of the Act, irrespective of its assessment of their constitutionality. (California Constitution,  
15 Art. 3, § 3.5.) Just as in *City of Long Beach*, the Commission is carrying out its statutory mandate in  
16 prosecuting the instant enforcement action, and it cannot reasonably come within the purview of the  
17 anti-SLAPP statute. (See sections II & III, below.)

18 Finally, the purposes behind the Act itself, and the provisions of the Act that were instituted to  
19 inhibit subsequent legislative action that might thwart the accomplishment of those purposes, support the  
20 conclusion that the Commission's enforcement of the Act should not, and was not intended to be,  
21 subject to an impediment such as the instant anti-SLAPP motion. As noted above, one of the voters'  
22 fundamental purposes in establishing the Act was to ensure that the Act's provisions be "vigorously  
23 enforced." (Gov. Code §81002, subdivision (f).) To protect the ability of the Commission to vigorously  
24 enforce the Act, Government Code section 83122 provides for a minimum appropriation that shall be  
25 approved every year to finance the Commission's activities. Further, Government Code section 81012  
26 provides that in order to amend the Act, the Legislature must obtain the approval of a two-thirds  
27 majority in each house. Under defendants' reading of the anti-SLAPP statute, by virtue of the nature of  
28 the activity regulated by the Act, almost any civil enforcement action undertaken by the Commission

1 would be subject to an anti-SLAPP motion. (See *Governor Gray Davis Committee v. American*  
2 *Taxpayers Alliance* (2002) 102 Cal.App.4th 449, 456.) Obviously, allowing anti-SLAPP motions in  
3 response to almost every civil enforcement action by the Commission under the Act would have a  
4 significant detrimental effect on the Commission's ability to "vigorously enforce" the Act. It would  
5 constitute a de facto amendment of the Act, in fundamentally undermining its liberal enforcement  
6 provisions, and thereby render the anti-SLAPP legislation itself subject challenge as an impermissible  
7 amendment of the Political Reform Act. Therefore, defendants' overly broad reading of the anti-SLAPP  
8 statute is inconsistent with a reasonable interpretation of its provisions, as it places the statute in conflict  
9 with the intent of the Act and inconsistent with the strictures on legislative amendment of the Act.  
10 (*Walters v. Weed* (1988) 45 Cal.3d 1, 8.) Even when interpreting provisions from different codes, it is  
11 axiomatic that statutes dealing with the same subject matter should be construed in a manner that  
12 harmonizes their provisions and avoids this type of conflict. (*Id.*, *Building Material & Construction*  
13 *Teamsters' Union, Local 216 v. Farrell* (1986) 41 Cal. 3d 651, 665.) This lends further support to a  
14 construction of the anti-SLAPP provisions as not being applicable to civil enforcement actions by the  
15 Commission.

16  
17 **II.**  
18 **LAUNDERING CAMPAIGN CONTRIBUTIONS**  
19 **IS AN ILLEGAL ACTIVITY AND THEREFORE**  
20 **NOT PROTECTED BY THE ANTI-SLAPP STATUTE.**

21 The primary burden of a litigant in defending against an anti-SLAPP motion is set forth at  
22 subdivision (b)(1) of Code of Civil Procedure section 425.16 as follows:

23 A cause of action against a person arising from any act of that person in  
24 furtherance of the person's right of petition or free speech under the United  
25 States or California Constitution in connection with a public issue shall be  
26 subject to a special motion to strike, unless the court determines that the  
27 plaintiff has established that there is a probability that the plaintiff will  
28 prevail on the claim.

29 Under subdivision (b)(1), the determination of the validity of an anti-SLAPP motion is subject to  
30 a two step analysis:

31 Section 425.16 articulates a "two-step process for determining whether an  
32 action is a SLAPP." [citations]" First, the court decides whether the  
33 defendant has made a threshold prima facie showing that the defendant's

1 acts, of which the plaintiff complains, were ones taken in furtherance of  
2 the defendant's constitutional rights of petition or free speech in  
3 connection with a public issue. [Citation.] If the court finds that such a  
4 showing has been made, then the plaintiff will be required to demonstrate  
5 that "there is a probability that the plaintiff will prevail on the claim."  
6 [Citations.] The defendant has the burden on the first issue, the threshold  
7 issue; the plaintiff has the burden on the second issue. [Citation.]'  
8 [Citation.]" [Citations] "Only a cause of action that satisfies both prongs of  
9 the anti-SLAPP statute--i.e., that arises from protected speech or  
10 petitioning and lacks even minimal merit--is a SLAPP, subject to being  
11 stricken under the statute." [Citation]

12 (*Governor Gray Davis Committee v. American Taxpayers Alliance* (2002)  
13 102 Cal.App.4th 449, 456.)

14 In order to grant defendants' special motion to strike the complaint, the court must first  
15 determine that defendants have met their burden of showing that their actions, as set forth in the  
16 complaint, were taken in furtherance of their constitutional rights of free speech.

17 The complaint alleges that in January 2000, and again in January 2002, defendant Caroline Getty  
18 made a transfer of \$500,000 from her personal account into the Wild Rose, LLC company account while  
19 directing defendant Wild Rose, LLC to make a \$500,000 campaign contribution to the Nature  
20 Conservancy Action Fund of California to support ballot measure campaigns. This type of transaction,  
21 where an individual directs another to make a campaign contribution and then reimburses the contributor  
22 for the amount of the contribution, is commonly referred to as "campaign money laundering."

23 When determining whether campaign money laundering is an action "in furtherance of  
24 constitutional rights of free speech" and "arising out of acts in furtherance of constitutionally protected  
25 conduct," the court in *Paul for Council v. Hanyecz* (2001) 85 Cal. App.4<sup>th</sup> 1356, 1364 concluded as  
26 follows:

27 ...the probability that the legislature intended to give  
28 defendants section 425.16 protection from a lawsuit based on  
injuries they are alleged to have caused by their *illegal*  
campaign money laundering scheme is as unlikely as the  
probability that such protection would exist for them if they  
injured plaintiff while robbing a bank to obtain the money for  
the campaign contributions or while hijacking a car to drive the  
campaign contributions to the post office for mailing. Under  
the facts demonstrated by this record, we cannot permit  
defendants to wrap themselves in this vital legislation.

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1 In the *Paul for Council* case, defendants acknowledged in their moving papers that they violated  
2 the Political Reform Act when they laundered campaign contributions to persons running for local and  
3 state offices by having family members submit contributions to the campaigns of various candidates,  
4 and then reimbursing those family members for the amounts contributed.

5 The court in *Paul for Council* stated that:

6 ...while it is technically true that laundering campaign  
7 contributions is an act in furtherance of the giving of such  
8 contributions, that is, in furtherance of an act of free speech,  
9 we reject the notion that section 425.16 exists to protect such  
10 illegal activity.

11 (*Id.* At p. 1366.)

12 In the instant case, defendants have submitted declarations from Norbert Riedy and defendant  
13 Caroline Getty in support of their special motion to strike that largely establish the campaign money  
14 laundering and intermediary violations alleged in the complaint. Mr. Riedy states in his declaration that  
15 he is, and was, the Executive Director of defendant Wild Rose, LLC at all times relevant to these  
16 proceedings, (Riedy Declaration ¶ 2) and that the entire annual budget for defendant Wild Rose, LLC,  
17 including its funding for operations, salaries, overhead, charitable grants, donations, and all other  
18 expenditures comes from money received by defendant Wild Rose, LLC from defendant Caroline Getty  
19 (Riedy Declaration ¶ 5). Defendant Caroline Getty states in her declaration that she caused defendant  
20 Wild Rose, LLC to be formed in 1999 for the purpose of making charitable grants and donations (Getty  
21 Declaration ¶ 2). She further states that she directed defendant Wild Rose, LLC to make a donation of  
22 \$500,000 to the Nature Conservancy Action Fund to support Propositions 12 and 13 in January 2000  
23 (Getty Declaration ¶ 4) and that she directed defendant Wild Rose, LLC to make a donation of \$500,000  
24 to the Nature Conservancy Action Fund to support Proposition 40 in January 2002 (Getty  
25 Declaration ¶ 5).

26 However, two important facts were omitted from discussion in the declarations of Norbert Riedy  
27 and defendant Getty. At the same time defendant Getty directed defendant Wild Rose, LLC to make the  
28 two \$500,000 contributions to the Nature Conservancy Action Fund of California in January 2000 and  
January 2002, defendant Getty also made arrangements to transfer \$500,000 from her personal trust  
account into a company account for Wild Rose, LLC in January 2000, and again in January 2002, to

1 reimburse defendant Wild Rose, LLC for the campaign contribution checks it delivered on her behalf  
2 (Declaration of Jon Wroten ¶¶ 5, 6).

3 There was no dispute of the facts in *Paul for Council*, as the defendants admitted they committed  
4 campaign money laundering by reimbursing their relatives for the campaign contributions they made.  
5 Similarly, there is no dispute of the facts in this case. All funds for operations and donations were  
6 supplied to defendant Wild Rose, LLC by defendant Getty. Defendant Getty directed defendant Wild  
7 Rose, LLC to make two \$500,000 contributions to the Nature Conservancy Action Fund of California in  
8 2000 and 2002, and defendant Getty transferred \$500,000 from her personal account into Wild Rose,  
9 LLC to reimburse it for each contribution. By reimbursing defendant Wild Rose, LLC for the two  
10 \$500,000 campaign contributions it made on her behalf, defendant Getty committed campaign money  
11 laundering. As such, just as the defendants in *Paul for Council* could not wrap themselves in the  
12 protections of the anti-SLAPP statute, neither can defendants Getty and Wild Rose, LLC wrap  
13 themselves in the anti-SLAPP protections of section 425.16.

14 The court in *Paul for Council* concluded that campaign money laundering was not a valid  
15 activity undertaken by those defendants in furtherance of their constitutional right of free speech, and as  
16 a matter of law, those defendants could not meet their burden as to the first step of the two step process  
17 that the court must undertake when ruling on an anti-SLAPP special motion to strike. Likewise, given  
18 the facts of this case, this court must reach the same conclusion that defendant Getty’s campaign money  
19 laundering through defendant Wild Rose, LLC is not a valid activity undertaken in furtherance of  
20 defendants’ constitutional right of free speech, and therefore, as a matter of law, defendants Getty and  
21 Wild Rose, LLC cannot meet their burden as to the first step of the analysis under section 425.16, and as  
22 such, the court should deny defendants’ special motion to strike.

23  
24 **III.**  
25 **ASSUMING ARGUENDO THAT THIS COURT WILL**  
26 **REACH THE SECOND STEP IN THE ANALYSIS, PLAINTIFF**  
27 **HAS DEMONSTRATED A PROBABILITY OF PREVAILING**  
28 **ON THE CLAIMS ALLEGED IN THE COMPLAINT.**

Regarding the second step in the two-step process for determining whether an action is a SLAPP  
under Code of Civil Procedure section 425.16, the burden shifts to plaintiff to demonstrate “there is a

1 probability that plaintiff will prevail on the claim.” (*Governor Gray Davis Committee v. American*  
2 *Taxpayers Alliance, supra*, 102 Cal.App.4th 449, 456.)

3       However, because of the preclusive effect of an anti-SLAPP motion on a litigant’s right to a jury  
4 trial, courts have construed the standard of proof for a litigant defending against an anti-SLAPP motion  
5 as being “simply to demonstrate by affidavit a prima facie case.” (*Lafayette Morehouse, Inc. v.*  
6 *Chronicle Publishing Co.* (1995) 37 Cal.App.4th 855, 867.) Recently, in *Navellier v. Sletten* (2003) 29  
7 Cal.4th 82, the California Supreme Court addressed the threshold showing that a litigant must make to  
8 overcome an anti-SLAPP motion as follows:

9                   [T]he statute does not bar a plaintiff from litigating an action that arises  
10 out of the defendant's free speech or petitioning [citation]; it subjects to  
11 potential dismissal only those actions in which the plaintiff cannot "state  
12 and substantiate a legally sufficient claim" [citation]....**As our emerging  
13 anti-SLAPP jurisprudence makes plain, the statute poses no obstacle  
14 to suits that possess minimal merit.** [citation]

15 (*Id.* at p. 93, emphasis added.)

16       As discussed in section II above, defendants have admitted facts in the declarations they  
17 submitted to support their special motion to strike that largely establish that plaintiff has more than met  
18 the “minimal merit” standard that it must demonstrate. Additional facts are set forth in the declarations  
19 of Commission Investigator Jon Wroten, Steven McCormick and Graham Chisholm,<sup>1</sup> attached to this  
20 memorandum

21       The complaint alleges in the first cause of action against defendant Caroline Getty that she made  
22 campaign contributions, directly or indirectly, in a name other than her own, in violation of Government  
23 Code section 84301. The declarations submitted by defendants establish that all operating funds and  
24 funds for donations are provided to defendant Wild Rose, LLC by defendant Getty, and defendant Getty  
25 directed defendant Wild Rose, LLC to make the campaign contributions to the Nature Conservancy  
26 Action Fund of California on her behalf. Defendant Getty also admits in her declaration that she was the  
27 true source of the funds for both contributions, and she further asserts that representatives of the Nature  
28 Conservancy knew that she was the true source of the funds (Getty Declaration ¶ 6). However, contrary

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<sup>1</sup> Facsimile copies of the declarations of Steven McCormick and Graham Chisholm have been attached. Their declarations bearing original signatures will be submitted prior to the hearing.

1 to defendant Getty's declaration, the Nature Conservancy was not aware that defendant Getty was the  
2 true source of the contributions (Declaration of Steven McCormick ¶ 3 and Declaration of Graham  
3 Chisholm ¶ 3). Additionally, at the same time defendant Getty directed defendant Wild Rose, LLC to  
4 make the two \$500,000 contributions to the Nature Conservancy Action Fund of California in January  
5 2000 and again in January 2002, defendant Getty also made arrangements to transfer \$500,000 from her  
6 personal trust account into a company account for Wild Rose, LLC in January 2000, and again in  
7 January 2002, to reimburse defendant Wild Rose, LLC for the campaign contribution checks it delivered  
8 on her behalf (Declaration of Jon Wroten ¶ ¶ 5, 6).

9         The complaint alleges in the second cause of action against defendant Wild Rose, LLC that it  
10 made contributions on behalf of another, or while acting as an intermediary or agent of another without  
11 disclosing to the recipient of the contributions the true source of the funds. The declarations submitted  
12 by defendants establish that defendant Getty provided all funding for defendant Wild Rose, LLC and  
13 she directed defendant Wild Rose, LLC to make the contributions to the Nature Conservancy Action  
14 Fund of California on her behalf. Defendant Getty also admits in her declaration that she was the true  
15 source of the contributions that were made by defendant Wild Rose, LLC (Getty Declaration ¶ 6) and  
16 that she caused defendant Wild Rose, LLC to file campaign statements in 2000 and 2002 claiming credit  
17 for the contributions (Getty Declaration ¶ 7). At the same time defendant Getty directed defendant Wild  
18 Rose, LLC to make the two \$500,000 contributions to the Nature Conservancy Action Fund of  
19 California in January 2000 and again in January 2002, defendant Getty also made arrangements to  
20 transfer \$500,000 from her personal trust account into a company account for Wild Rose, LLC in  
21 January 2000, and again in January 2002, to reimburse defendant Wild Rose, LLC for the campaign  
22 contribution checks it delivered on her behalf (Declaration of Jon Wroten ¶ ¶ 5, 6). Additionally, the  
23 transmittal letter that accompanied each contribution identified defendant Wild Rose, LLC as the  
24 contributor, and made no reference to defendant Getty as the source of the contribution (Declaration of  
25 Jon Wroten ¶ 3).

26         The complaint alleges in the third cause of action against defendant Getty that she failed to file a  
27 major donor campaign statement in 2000 disclosing the \$500,000 contribution she made to the Nature  
28 Conservancy Action Fund of California through defendant Wild Rose, LLC. Defendant Getty admits in

1 her declaration that she caused defendant Wild Rose, LLC to file a campaign statement in 2000 claiming  
2 responsibility for the contribution (Getty Declaration ¶ 7).

3 In each instance, as pointed out herein, defendants have acknowledged and admitted facts  
4 alleged in the complaint, and have themselves established that plaintiff has a probability of prevailing on  
5 the claims alleged in the complaint. Therefore, this court should conclude that plaintiff has met its  
6 burden under the second step of the analysis under section 425.16, and as such, the court should deny  
7 defendant's special motion to strike.

8  
9 **CONCLUSION**

10 For all of the reasons set forth above, plaintiff, Fair Political Practices Commission requests that  
11 the court deny the special motion to strike filed by defendants Caroline Getty and Wild Rose, LLC.  
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14 Dated: \_\_\_\_\_

\_\_\_\_\_  
Steven Benito Russo  
Jeffery A. Sly  
Attorneys for Plaintiff  
Fair Political Practices Commission